

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Assessment and Collection)
 of Regulatory Fees for)
 Fiscal Year 1999)

MD Docket No. 98-200

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

REPLY COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT") herein submits its Reply to the comments filed by GE American Communications Inc. ("GE") and PanAmSat Corporation ("PanAmSat") in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

In their Comments, GE and PanAmSat ask the Commission to amend its regulatory fee schedule to assess a space station or other fee on COMSAT "to recover the Signatory and other expenses created by COMSAT."¹ In this regard, PanAmSat recommends that the Commission recover these expenses by adding Inmarsat Ltd.'s satellites to the geosynchronous space station category; eliminating COMSAT's "exemption" for Inmarsat space stations; and imposing a space station fee on COMSAT or Inmarsat.²

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¹ See Comments of GE at 8; Comments of PanAmSat at 1-2..

² Comments of PanAmSat at 2.

These parties' arguments are, in large part, similar if not identical to arguments they have previously raised which have been rejected by both the Commission³ and the Court of Appeals.⁴ The Commission cannot impose space station fees on the INTELSAT or Inmarsat space stations nor can it impose a Signatory fee or any new category of fee on COMSAT.⁵ While Inmarsat is no longer an IGO, neither it nor its satellites are subject to Section 9 of the Communications Act of 1934, as amended ("the Act"), as neither Inmarsat nor its satellites are licensed by the FCC pursuant to Title III of the Act.

1. The Commission cannot accomplish indirectly what Congress has forbidden it to do directly.

In its Notice, the Commission stated that parties filing comments in the NOI proceeding "do not need to resubmit these same arguments in response to the NPRM."⁶ Nevertheless, GE and PanAmSat have ignored the Commission's

³ As long ago as 1995, in the FCC proceeding to set the 1995 fees, PanAmSat and GE urged the FCC to assess and collect "space station" fees from COMSAT. *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13550 (1995). The Commission rejected this argument, concluding that "Congress did not intend for the Commission to assess a fee per space station for the space segment facilities of INTELSAT and Inmarsat," over which the FCC has no regulatory authority. *Id.* at 13550. The agency based its conclusion on the legislative history of Section 9, which states that Congress intended that space station regulatory fees be imposed only "on operators of U.S. facilities, consistent with FCC jurisdiction." *Id.* quoting H.R. Rep. No. 207, 102nd Cong., 1st Sess. 26 (1991). See also *Assessment and Collection of Regulatory fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17187 (1997).

⁴ *COMSAT Corp. v. Federal Communications Comm'n*, 114 F.3d 223 (D.C. Cir. 1997).

⁵ See Reply Comments of COMSAT Corporation in MD. Docket No. 98-200, filed January 19, 1999 (hereby incorporated by reference).

⁶ Notice at para. 21.

directive; their comments primarily are a third or fourth iteration of those they have made earlier in this and related proceedings. Accordingly, it would serve no useful purpose for COMSAT to respond again herein in detail to GE and PanAmSat.

In brief summation, while COMSAT is willing to pay annual regulatory fees which are commensurate with the costs of regulating COMSAT, the Commission cannot do what Congress and the courts have said is impermissible. The Commission cannot impose space station fees on COMSAT for the INTELSAT and Inmarsat space stations which do not fall within the FCC's jurisdiction nor can it impose any new category of fee on COMSAT.

COMSAT already pays regulatory fees which reasonably relate to the costs of regulating COMSAT. There is no valid public interest reason for imposing any additional fees. If there are any additional costs associated with the Commission's regulatory oversight of COMSAT's activities they should in all fairness be borne by all of the beneficiaries of those activities, not just by COMSAT alone. To a substantial degree, it is COMSAT's competitors that chiefly benefit from the ongoing regulation of COMSAT. Moreover, as is now rather ironically demonstrated by GE and

PanAmSat, it is largely COMSAT's competitors that create most of the costs of regulating COMSAT by filing reiterative and unnecessary pleadings.

2. Regulatory fees apply only to space stations directly licensed by the FCC under Title III of the Communications Act.

PanAmSat argues that the Commission should increase the number of feeable GSO space stations by adding Inmarsat Ltd.'s satellites, and imposing an annual regulatory space station fee on COMSAT and/or Inmarsat. PanAmSat's argument is fundamentally flawed.

The Commission cannot assess an annual regulatory fee on Inmarsat Ltd. for its satellites in geosynchronous orbit. While Inmarsat is no longer an IGO, its satellites are not licensed by the Commission. As unequivocally declared by Congress: space station regulatory "fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act."⁷

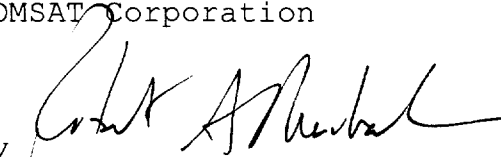
In addition, there are strong policy arguments which support this outcome. COMSAT does not control the number of satellites that Inmarsat decides to procure and launch; it

⁷ H.R. Rep. No. 102-207, 102nd Cong., 26; H.R. Rep. No. 103-213, 103^d Cong., 1st Sess. 499. See also, *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13550 (1995) ("Congress intended that COMSAT ... would be subject to a space segment fee only for its licensed operations." (emphasis added)).

utilizes only a relatively small percentage of the capacity of Inmarsat's satellites; and several of the satellites are not even accessible from the United States. Accordingly, it would be inappropriate to charge Inmarsat or COMSAT a regulatory fee based on the number of Inmarsat satellites in orbit.

Respectfully submitted,
COMSAT Corporation

By

A handwritten signature in black ink, appearing to read "Robert A. Mansbach", written over a horizontal line.

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April 29, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of COMSAT Corporation was served by first-class mail, postage prepaid, this 29th day of April 1999, to each of the following:

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